



STATE OF MINNESOTA

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January 2, 2013

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Ms. Bridget Gernander
Clerk of Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155


Re: *Minnesota Break The Bonds Campaign, et al. v. Minnesota State Board of Investment*
Appellate Court Case No. A12-0945

Dear Ms. Gernander:

Enclosed for filing with the Court are the original and four copies of Respondent's Response To Petition For Review. Also enclosed is an Affidavit of Service.

By copy of this letter service is made upon all parties.

Sincerely,


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Attorney for Minnesota State Board of
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Enclosures

cc: Jordan S. Kushner (w/enc.) (via U.S. Mail)
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AG: #3141985-v1

STATE OF MINNESOTA

IN SUPREME COURT

Minnesota Break The Bonds Campaign, et al.,

Petitioners,

vs.

Minnesota State Board of Investment,

Respondent.

Court of Appeals Decision Filed November 13, 2012

RESPONDENT'S RESPONSE TO PETITION FOR REVIEW

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ATTORNEY FOR RESPONDENT

TO: The Supreme Court of the State of Minnesota.

Respondent State Board of Investment (“SBI”) respectfully requests this Court to deny review in this matter.

I. LEGAL ISSUES AND THEIR RESOLUTION BY THE COURT OF APPEALS.

- A. Whether the SBI is authorized to invest in foreign government bonds, including Israel bonds, when Minn. Stat. § 11A.24, subd. 6(a)(5) (2010)¹ specifically permits investment in “international securities” “in addition to” other delineated investments?

The Court of Appeals found the investments were statutorily authorized.

- B. Whether Petitioners lack standing for Counts Two and Three of their Complaint because the allegations involve a policy disagreement with the SBI’s discretionary decisions?

The Court of Appeals determined Petitioners lack standing for Counts Two and Three.

II. RULE CRITERIA RELIED UPON BY PETITIONERS.

Petitioners invoke the criteria of Minn. R. Civ. App. P. 117, subds. 2(a), (c) and (d). The Court of Appeals correctly applied established law to the particular circumstances of this case. Accordingly, none of these criteria supports granting further review.

III. STATEMENT OF THE CASE.

Petitioners seek review of the Court of Appeals’ unpublished opinion affirming dismissal of their declaratory judgment claims protesting the SBI’s investment in Israel government bonds. Count One of the Complaint alleged that the SBI is not statutorily authorized to invest in Israel government bonds. Counts Two and Three asserted that the SBI violates a statutory duty to invest assets lawfully and prudently, because Israel allegedly violates international law in its use

¹ Section 11A.24 was amended in May 2012, 2012 Minn. Laws ch. 286, art. 10, § 3. As a result, Minn. Stat. § 11A.24, subd. 6(a)(5) was renumbered as Minn. Stat. § 11A.24, subd. 6(a)(4) (2012).

of funds, and the SBI's investment allegedly exposes the State to potential tort liability because of Israel's alleged illegal actions.

The SBI moved to dismiss all claims, and in response, Petitioners moved for summary judgment on Count One. The district court granted the SBI's motion to dismiss, concluding that Petitioners lack standing; Count One was without merit because Section 11A.24, subd. 6(a)(5) (2010) authorizes the SBI to invest in Israel government bonds; the Act of State and political question doctrines preclude jurisdiction on Counts Two and Three, and in any event, the Counts fail to state a claim upon which relief can be granted.

The Court of Appeals, in a unanimous, unpublished opinion, affirmed the district court's judgment of dismissal. The Court of Appeals concluded that Petitioners fail to state a claim upon which relief can be granted as to Count One, since the plain language of Minn. Stat. § 11A 24, subd. 6(a)(5) unambiguously permits investment in "international securities," which includes foreign government bonds. (Slip Op. at 7.)

The Court of Appeals concluded that Petitioners lack standing as to Counts Two and Three because they failed to allege an injury-in-fact and because the Counts "rest on disagreements with 'policy or discretion' of SBI officials," which disagreements do not confer standing. (*Id.*)

IV. ARGUMENT.

None of Petitioners' claims presents an important legal issue that warrants the expenditure of this Court's limited judicial resources. Nor is further review warranted based on Petitioners' contention that the lower courts departed from the usual course of justice, or that this case somehow presents a need for a decision by this Court in order to develop, clarify or harmonize the law. Indeed, the Court of Appeals did not apply any new legal principle or policy.

Rather, it correctly applied established principles of statutory interpretation and standing to the particular facts of the case.

Count One involved a narrow question of statutory interpretation which the Court of Appeals resolved by applying the well-established principle that the plain language of a statute controls. Minn. Stat. § 645.16 (stating when the words of a statute are clear, the plain meaning of the law controls and “shall not be disregarded”); *ILHC of Eagan, LLC v. County of Dakota*, 693 N.W.2d 412, 419 (Minn. 2005) (“The touchstone for statutory interpretation is the plain meaning of a statute’s language.”).

Petitioners wrongly state that the court’s statutory interpretation confounds the legislative purpose. To the contrary, the court gave effect to the plain statutory language and correctly concluded that Minn. Stat. § 11A.24, subd. 6(a)(5), which authorizes investment in “international securities” “in addition to” other delineated investments, authorizes investments in foreign government bonds. Moreover, contrary to Petitioners’ argument that the court ignored the “full body of the text,” the court considered the statute as a whole, and correctly stated:

Subdivision 6 is a definite expansion of SBI-authorized investments; section 11A.24, subdivisions 2 to 5, impose much more detailed limitations on the types of securities that SBI is authorized to purchase. But we cannot ignore the language of subdivision 6, which states that the investments set forth in that subdivision are authorized “[i]n addition to the investments authorized in subdivisions 1 to 5” and that subdivision 6(a)(5), international securities, is listed as an investment option separate from those listed in subdivision 6(a) (1-4), not as a modification of those types of investments.

(Slip Op. at 6.)

The court also correctly rejected the use of canons of statutory construction, following this Court’s dictate that when a statute’s meaning is plain, “statutory construction is neither necessary nor permitted.” *American Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001).

Similarly, the court applied well-established principles to determine that Petitioners lack standing to assert their claims in Counts Two and Three. These claims allege that the SBI has violated its investment duties, based on allegedly illegal acts of Israel. The court correctly concluded that these Counts fail to allege an injury-in-fact: an injury different from any damage or injury sustained by the general public. (Slip Op. at 4.) While Petitioners complain that the court “ignore[d] the injuries suffered by the Bil’in Villagers,” as the court correctly noted, these Petitioners “have no identified ties to the state.” (Slip Op. at 2.) As a result, they have no standing to claim that the SBI has violated its investment obligations.

The court also properly rejected taxpayer standing, relying on this Court’s precedent. (Slip Op. at 7, citing *McKee v. Likins*, 261 N.W.2d 566, 571 (Minn. 1977) (commenting that the “activities of governmental agencies engaged in public service ought not to be hindered merely because a citizen does not agree with the policy or discretion of those charged with the responsibility of executing the law”). The court correctly found that Petitioners’ claims are based on disagreements with the SBI’s discretionary investment choices, and concluded that such policy disagreements do not confer taxpayer standing. (*Id.*) Since the court correctly applied unremarkable and established precedent, there is no basis for this Court to grant review.

Review also should be denied because there were additional grounds to affirm the district court, which the Court of Appeals did not reach. The district court correctly found that the political question and Act of State doctrines preclude Counts Two and Three. *See, e.g., Corrie v. Caterpillar, Inc.*, 503 F.3d 974, 984 (9th Cir. 2007) (deciding political question doctrine precluded claim for allegedly aiding and abetting Israel); *Doe I v. State of Israel*, 400 F. Supp.2d 86, 111 (D.D.C. 2005) (finding political question and Act of State doctrines barred claims requiring determination that Israeli settlement activities are illegal or tortious). In addition, the

district court correctly concluded that Counts Two and Three fail to state a claim since the ordinary commercial act of purchasing a foreign country's bonds does not make the SBI a participant in that country's alleged international law violations in any event. *See, e.g., In re South African Apartheid Litig.*, 617 F. Supp.2d 228, 257-258, 269 (S.D. N.Y. 2009) (stating "[i]t is (or should be) undisputed that simply doing business with a state or individual" is insufficient to create aiding and abetting liability).

Finally, the decision of the Court of Appeals is an unpublished opinion, which is yet another reason why this case does not warrant further review by the Court.


V. CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Court deny the petition for review.

Dated: January 2, 2013

Respectfully submitted,

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